

*DOA
9-3-17*

UNITED STATES DISTRICT COURT

for the
District of Arizona

United States of America)

v.)

Omar Gutierrez,)

a.k.a.: Diaz Omar Gutierrez,)

a.k.a.: Omar Gutierrez Diaz,)

(A095 724 415))

Defendant

Case No. *17-8368MJ*

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of September 2, 2017, in the County of Maricopa, in the District of Arizona, the defendant violated Title 8, U.S.C. § 1326(a), a felony, and Title 8, U.S.C. § 1325(a)(2) a class B misdemeanor, an offense described as follows:

See Attachment A Incorporated By Reference Herein

I further state that I am a Deportation Officer.

This criminal complaint is based on these facts:

See Attached Statement of Probable Cause Incorporated By Reference Herein

CEB

REVIEWED BY: Charles E. Bailey, P.S. for AUSA Brandon Brown

☒ Continued on the attached sheet.


Complainant's signature
Darrin J. McNeill,
Deportation Officer
Printed name and title

Sworn to before me and signed in my presence.

Date: September 5, 2017


Judge's signature

City and state: Phoenix, Arizona

John Z. Boyle,
United States Magistrate Judge
Printed name and title

ATTACHMENT A

Count 1

On September 2, 2017, Omar Gutierrez, an alien, was found in the United States of America at or near Phoenix, in the District of Arizona, after having been previously denied admission, excluded, deported, and removed from the United States at or near San Ysidro, California, on or about September 14, 2006, and not having obtained the express consent of the Secretary of the Department of Homeland Security to reapply for admission thereto; in violation of Title 8, United States Code, Section 1326(a), a felony.

Count 2

On September 2, 2017, at or near Phoenix, in the District of Arizona, Omar Gutierrez, an alien, did elude the examination or inspection by immigration officers in violation of Title 8, United States Code, Section 1325(a)(2), a class B misdemeanor.

STATEMENT OF PROBABLE CAUSE

I, Darrin J. McNeill, being duly sworn, hereby depose and state as follows:

1. Your affiant is a Deportation Officer with United States Immigration and Customs Enforcement (ICE). I have learned from direct participation in the investigation and from the reports and communications of other agents and officers the facts recited herein.
2. On September 2, 2017, Omar Gutierrez was booked into the Maricopa County Jail (MCJ) by the Phoenix Police Department on local charges. While incarcerated at the MCJ, Gutierrez was examined by ICE Officer J. Neri who determined him to be a citizen of Mexico, illegally present in the United States. On that same date, an immigration detainer was lodged with the MCJ. On September 3, 2017, Gutierrez was released from the MCJ and transported to the Phoenix ICE office for further investigation and processing. Gutierrez was held in administrative custody until his criminal and immigration records could be obtained and his identity confirmed.
3. Immigration history checks revealed Omar Gutierrez to be a citizen of Mexico and a previously deported criminal alien. Gutierrez was removed from the United States to Mexico at or near San Ysidro, California, on or about September 14, 2006, pursuant to an order of removal issued by an immigration judge. There is no record of Gutierrez in any Department of Homeland Security database to suggest that he

obtained permission from the Secretary of the Department of Homeland Security to return to the United States after his removal. Gutierrez's immigration history was matched to him by electronic fingerprint comparison.

4. Furthermore, there is no record of Omar Gutierrez in any Department of Homeland Security database to suggest that after his last removal from the United States he entered the United States at an official Port of Entry. Had Gutierrez presented himself at a Port of Entry, Department of Homeland Security records likely would reveal that information. Accordingly, your affiant believes that Gutierrez entered the United States at a location not designated as an official Port of Entry, and thereby eluded examination and inspection by Immigration Officers of the United States. Gutierrez's immigration history was matched to him by electronic fingerprint comparison.
5. On September 3, 2017, Omar Gutierrez was advised of his constitutional rights. Gutierrez freely and willingly acknowledged his rights and declined to make any further statements.
6. For these reasons, this affiant submits that there is probable cause to believe that on or about September 2, 2017, Omar Gutierrez, an alien, was found in the United States of America at or near Phoenix, in the District of Arizona, after having been previously denied admission, excluded, deported, and removed from the United States at or near San Ysidro, California, on or about September 14, 2006, and not having obtained the

express consent of the Secretary of the Department of Homeland Security to reapply for admission thereto; in violation of Title 8, United States Code, Section 1326(a) and on September 2, 2017, at or near Phoenix, in the District of Arizona, Omar Gutierrez, an alien, did elude the examination or inspection by immigration officers in violation of Title 8, United States Code, Section 1325(a)(2).



Darrin J. McNeill,
Deportation Officer,
Immigration and Customs Enforcement

Sworn to and subscribed before me
this 5th day of September, 2017.



John Z. Boyle,
United States Magistrate Judge